

EXHIBIT 12

166dlipp

PLEA

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

S3 10 Cr. 228 (LTS)

5 ERIC S. LIPKIN,

6 Defendant.

7 -----x

8 June 6, 2011
9 11:11 a.m.

10 Before:

11 HON. LAURA TAYLOR SWAIN,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
17 Southern District of New York

BY: JULIAN MOORE

18 LISA A. BARONI

MATTHEW SCHWARTZ

Assistant United States Attorneys

19 JAMES K. FILAN

Attorney for Defendant

20
21 - also present -

22 SA Paul Takla, FBI

SA Greg Hagarty, FBI

23 Natasha Ramesar, Pretrial Services Officer

166dlipp

PLEA

1 THE CLERK: I call the case, United States of America
2 versus Eric Lipkin.

3 MR. MOORE: Good morning, your Honor. Julian Moore
4 for the government. With me are my colleagues Lisa Baroni and
5 Matthew Schwartz, of the U.S. Attorney's office, along with
6 Special Agents Greg Hagarty and Paul Takla, of the FBI, and
7 Natasha Ramesar of the United States Pretrial Services.

8 THE COURT: Good morning, Mr. Moore, Ms. Baroni and
9 Mr. Schwartz, Agent Hagarty, Agent Takla, and Officer Ramesar.

10 MR. FILAN: Good morning, your Honor. James K. Filan,
11 counsel on behalf of Mr. Lipkin, who is seated at the table
12 next to me.

13 THE COURT: Good morning, Mr. Filan. Good morning,
14 Mr. Lipkin.

15 And, again, good morning all of you who have attended
16 today.

17 Is this Mr. Lipkin's first appearance?

18 MR. FILAN: Yes, it is, your Honor.

19 THE COURT: All right. Well, then, let's deal with
20 the advice of rights matters first.

21 Mr. Lipkin, would you please stand.

22 Please state your full name.

23 THE DEFENDANT: Eric Lipkin.

24 THE COURT: How old are you, sir?

25 THE DEFENDANT: 37.

166dlipp

PLEA

1 THE COURT: I will now explain certain rights that you
2 have under the Constitution of the United States.

3 You have the right to remain silent. You need not
4 make any statement. Even if you have already made statements
5 to the authorities, you need not make any additional
6 statements. Any statements that you do make can be used
7 against you.

8 Do you understand these rights?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: You have the right to be released either
11 conditionally or unconditionally pending trial unless I find
12 that there are no conditions that would reasonably assure your
13 presence at future court hearings and the safety of the
14 community. If the government were to ask me to detain you
15 pending trial, you are entitled to a prompt hearing on whether
16 such conditions exist.

17 Do you understand this right?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: Are you a citizen of the United States?

20 THE DEFENDANT: Yes, I am.

21 THE COURT: You have the right to be represented by an
22 attorney today and at all future proceedings in this case, and
23 if you are unable to afford an attorney, I will appoint an
24 attorney to represent you. Do you understand these rights?

25 THE DEFENDANT: Yes, I do.

166dlipp

PLEA

1 THE COURT: Do you wish to have and are you able to
2 obtain and afford counsel on your own?

3 THE DEFENDANT: Yes, I am.

4 THE COURT: Have you retained Mr. Filan to represent
5 you?

6 THE DEFENDANT: I have.

7 THE COURT: And it is your desire to proceed in these
8 matters with Mr. Filan as your retained counsel?

9 THE DEFENDANT: Yes.

10 THE COURT: And I am informed that -- Mr. Filan
11 informed that Mr. Lipkin has an application to waive indictment
12 and enter a guilty plea to the six-count Superseding
13 Information that is labeled S3 10 Criminal 228.

14 Is that correct?

15 MR. FILAN: That is correct, your Honor.

16 THE COURT: And this plea is pursuant to the agreement
17 that has been marked as Government Exhibit 1, and is at defense
18 table now?

19 MR. FILAN: That is correct, your Honor.

20 THE COURT: And you and Mr. Lipkin have also reviewed
21 and signed the advice of rights form that has been marked as
22 Court Exhibit 1.

23 MR. FILAN: We have, your Honor.

24 THE COURT: Thank you. I have a question for
25 Mr. Moore at this point.

166dlipp

PLEA

1 Mr. Moore, would you please make a statement for the
2 record as to the government's victim notification activities in
3 connection with this matter. I note that the courtroom is full
4 and that I signed an order requiring certain information be
5 posted on the website, but perhaps you can bring us up to date.

6 MR. MOORE: Yes, your Honor.

7 Last week we issued a letter to your attention
8 requesting that we make public that this proceeding will be
9 occurring today, namely, that Mr. Lipkin will be pleading to a
10 superseding S3 Information to the counts, which we will go
11 through today. We also requested that we be able to post this
12 announcement on the U.S. Attorney's Madoff website.

13 Your Honor kindly ordered -- so ordered that letter on
14 Thursday, and those conditions did happen as of that date.

15 THE COURT: Thank you.

16 Now, I had received a call indicating that there was
17 one victim who wished to be heard today. This morning we
18 received a further message that that person is unable to attend
19 court today.

20 Is the government aware of any victims who are here
21 present today who wish to be heard?

22 MR. MOORE: We are not, your Honor. However, we are
23 aware that your deputy, Ms. Ng, did make a sign-up sheet
24 available, but we do not believe anyone signed that sheet.

25 THE COURT: It's my understanding that no one has

166dlipp

PLEA

1 signed on the sheet.

2 Is there anyone here who does wish to be heard?

3 (Pause)

4 All right. We will proceed, then.

5 Mr. Lipkin, before I accept your Waiver of Indictment
6 and your guilty plea, there are a number of questions that I
7 must ask you while you are under oath to assure that it is a
8 valid waiver and plea. At times I may cover a point more than
9 once, and I may cover matters that were also addressed in the
10 advice of rights form that you have seen. But if I do so, that
11 is because it is very important that you understand what is
12 happening here today.

13 If you don't understand something that I ask you,
14 please say so and I will reword the question or you may speak
15 with your attorney. Do you understand that?

16 THE DEFENDANT: I do.

17 THE COURT: Ms. Ng, would you please administer the
18 oath.

19 THE CLERK: Please raise your right hand.

20 (The defendant was sworn)

21 THE COURT: Would you please state your full name for
22 the record.

23 THE DEFENDANT: Eric Scott Lipkin.

24 THE COURT: Mr. Lipkin, do you understand that you
25 have solemnly promised to tell the truth, and that if you

166dlipp

PLEA

1 answer any of my questions falsely, your false or untrue
2 answers may later be used against you in another prosecution
3 for perjury or making a false statement?

4 THE DEFENDANT: I do.

5 THE COURT: You can be seated for the next portion of
6 the proceeding.

7 You indicated that your age is 37, is that correct?

8 THE DEFENDANT: Yes.

9 THE COURT: How far did you go in school?

10 THE DEFENDANT: I graduated from Ramapo College.

11 THE COURT: In what field of study?

12 THE DEFENDANT: Economics. I also have an associates
13 degree in finance.

14 THE COURT: Are you able to speak, read and understand
15 the English language well?

16 THE DEFENDANT: Yes.

17 THE COURT: And you are a citizen of the United
18 States?

19 THE DEFENDANT: I am.

20 THE COURT: Are you now or have you recently been
21 under the care of a doctor or a psychiatrist?

22 THE DEFENDANT: No.

23 THE COURT: Have you ever been treated or hospitalized
24 for any mental illness or for any type of addiction, including
25 drug or alcohol addiction?

166dlipp

PLEA

1 THE DEFENDANT: No.

2 THE COURT: Have you ever been addicted to any drugs
3 or alcohol?

4 THE DEFENDANT: No.

5 THE COURT: In the past 24 hours, have you taken any
6 drugs, medicine, or pills, or have you drunk any alcohol?

7 THE DEFENDANT: No.

8 THE COURT: Is your mind clear today?

9 THE DEFENDANT: It is.

10 THE COURT: Are you feeling well physically today?

11 THE DEFENDANT: Yes.

12 THE COURT: Are you represented by a lawyer here
13 today?

14 THE DEFENDANT: I am.

15 THE COURT: What is your attorney's name?

16 THE DEFENDANT: James Filan.

17 THE COURT: Mr. Filan, Mr. Moore, does either of you
18 have any doubt as to Mr. Lipkin's competence to waive
19 indictment and enter a plea at this time?

20 MR. MOORE: No, your Honor.

21 MR. FILAN: I have no knowledge. He should be able
22 to, yes, your Honor.

23 THE COURT: Thank you. You have no knowledge of any
24 reason for me --

25 MR. FILAN: I have no reason to believe that he is

166dlipp

PLEA

1 unable to enter a plea. I'm sorry.

2 THE COURT: Thank you.

3 Mr. Lipkin, your attorney has informed me that you
4 wish to waive indictment and enter a plea of guilty to an
5 information. Do you wish to waive indictment and enter a
6 guilty plea?

7 THE DEFENDANT: Yes.

8 THE COURT: Have you fully discussed your case with
9 your attorney, including the charges to which you intend to
10 plead guilty and any possible defenses you may have to those
11 charges?

12 THE DEFENDANT: I have.

13 THE COURT: Have you and your attorney also discussed
14 the consequences of entering a guilty plea?

15 THE DEFENDANT: Yes, we have.

16 THE COURT: Are you satisfied with your attorney and
17 his representation of you?

18 THE DEFENDANT: I am.

19 THE COURT: On the basis of Mr. Lipkin's responses to
20 my questions and my observations of his demeanor, I find that
21 he is fully competent to enter an informed plea at this time
22 and to waive indictment.

23 Before I accept your plea, sir, I am going to ask you
24 many so more questions. These questions are intended to
25 satisfy the Court that you wish to plead guilty because you are

166dlipp

PLEA

1 in fact guilty and that you fully understand your rights and
2 the consequences of your plea. I am now going to describe to
3 you certain rights that you have under the Constitution and
4 laws of the United States. You will be giving up these rights
5 if you enter a guilty plea. Please listen carefully. If you
6 do not understand something that I'm saying or describing, stop
7 me and I or your attorney will explain it more fully.

8 Under the Constitution and laws of the United States,
9 you have the right to a speedy and public trial by a jury on
10 the charges against you that are set out in the Information.

11 Do you understand that.

12 THE DEFENDANT: I do.

13 THE COURT: Do you understand that you have the right
14 to plead not guilty and to continue to plead not guilty?

15 THE DEFENDANT: I do.

16 THE COURT: If there were a trial, you would be
17 presumed innocent and the government would be required to prove
18 you guilty by competent evidence and beyond a reasonable doubt.
19 You would not have to prove that you were innocent at a trial.
20 Do you understand that?

21 THE DEFENDANT: I do.

22 THE COURT: If there were a trial, a jury composed of
23 12 people selected from this district would have to agree
24 unanimously in order to find you guilty. Do you understand
25 that?

166dlipp

PLEA

1 THE DEFENDANT: I do.

2 THE COURT: If there were a trial, and at all stages
3 leading up to it, you would have the right to be represented by
4 an attorney, and if you could not afford one, an attorney would
5 be provided to you free of cost. Do you understand that?

6 THE DEFENDANT: I do.

7 THE COURT: If there were a trial, you would have the
8 right to see and hear all of the witnesses against you and your
9 attorney could cross-examine them. You would also have the
10 right to have your attorney object to the government's evidence
11 and offer evidence on your behalf, if you so desired. In
12 addition, you would have the right to have witnesses required
13 to come to court to testify in your defense, and you would have
14 the right to testify yourself but you would not be required to
15 testify.

16 Do you understand all of that?

17 THE DEFENDANT: I do.

18 THE COURT: Do you understand that if there were a
19 trial and you decided not to testify, no adverse inference
20 could be drawn against you based on your decision not to
21 testify?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that if you were
24 convicted at a trial, you would have the right to appeal that
25 verdict?

166dlipp

PLEA

1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand each and every one of
3 these rights that I've asked you about?

4 THE DEFENDANT: I do.

5 THE COURT: Do you have any questions about any of
6 these rights?

7 THE DEFENDANT: No, I do not.

8 THE COURT: Do you understand that by entering a
9 guilty plea today you will be giving up each and every one of
10 these rights?

11 THE DEFENDANT: I do.

12 THE COURT: Do you also understand that you will be
13 giving up any possible claim that your constitutional rights
14 may have been violated?

15 THE DEFENDANT: I do.

16 THE COURT: And do you understand that you will have
17 no trial if you plead guilty?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand that by entering a
20 guilty plea, you will also have to give up your right not to
21 incriminate yourself because I will ask you questions about
22 what you did in order to satisfy myself that you are guilty as
23 charged and you will have to admit and acknowledge your guilt?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that you can change your

166dlipp

PLEA

1 mind right now and refuse to enter a plea of guilty? You do
2 not have to enter this plea if you do not want to for any
3 reason. Do you understand this fully?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you still wish to plead guilty?

6 THE DEFENDANT: I do.

7 THE COURT: The document that contains the charges to
8 which you've indicated you wish to plead guilty is called an
9 information. It has been issued by the United States Attorney.
10 You have a constitutional right to be charged by an indictment
11 rather than an information. An indictment would be a charge
12 issued from the grand jury. Do you understand that?

13 THE DEFENDANT: I do.

14 THE COURT: Mr. Filan, would you please show
15 Mr. Lipkin the Waiver of Indictment form.

16 (Pause)

17 Mr. Lipkin, have you signed this Waiver of Indictment?

18 THE DEFENDANT: I have.

19 THE COURT: Did you read it before you signed it?

20 THE DEFENDANT: I did.

21 THE COURT: You did discuss it with your attorney
22 before you signed it?

23 THE DEFENDANT: Yes.

24 THE COURT: Did you understand it before you signed
25 it?

166dlipp

PLEA

1 THE DEFENDANT: Yes, I did.

2 THE COURT: Do you understand that if you do not waive
3 indictment, if the government wished to prosecute you on these
4 particular charges that are in the Information, the government
5 would have to present the case to the grand jury, which might
6 or might not indict you on those charges?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand that you are under no
9 obligation to waive indictment?

10 THE DEFENDANT: Yes..

11 THE COURT: Do you understand that by waiving
12 indictment, you are giving up your right to have the case
13 presented to the grand jury?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand what a grand jury is?

16 THE DEFENDANT: I do.

17 THE COURT: Did anyone make any threats or promises to
18 get you to waive indictment?

19 THE DEFENDANT: No, they did not.

20 THE COURT: Have you seen a copy of the Third
21 Superseding Information that has the word "Information" at the
22 top and the number S3 10 Cr. 228 on it?

23 THE DEFENDANT: I did.

24 THE COURT: Have you read it?

25 THE DEFENDANT: Yes.

166dlipp

PLEA

1 THE COURT: Have you discussed it with your attorney?

2 THE DEFENDANT: Yes, we have.

3 THE COURT: Do you understand the charges against you
4 that are detailed in the Information?

5 THE DEFENDANT: I do.

6 THE COURT: If you would like, I can read the
7 Information out loud now here in court to you. Do you want me
8 to read it out loud to you?

9 THE DEFENDANT: No.

10 THE COURT: I find that Mr. Lipkin's Waiver of
11 Indictment is knowing and voluntary. I accept it and I so
12 order it.

13 Mr. Lipkin, do you understand that Count One of the
14 Superseding Information charges you with violating Section 371
15 of Title 18 of the United States Code by participating in a
16 conspiracy to, one, violate 15 United States Code, Sections
17 78q(a) and 78ff and Title 17 of the Code of Federal
18 Regulations, Section 240.17a-3 by falsifying books and records
19 of a broker-dealer, as well as conspiring to violate Title 15
20 of the United States Code, Sections 80b-4 and 80b-17 and 17
21 C.F.R., Section 275.204-2 by falsifying books and records of an
22 investment advisor, and also conspiring to violate Title 18 of
23 the United States Code, Sections 1027 and 2 by falsifying
24 statements to facilitate the theft concerning ERISA, that being
25 the Employee Retirement Income Security Act?

166dlipp

PLEA

1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand that Count Two of the
3 Superseding Information charges you with violating Title 18 of
4 the United States Code, Section 371 by participating in a
5 conspiracy to violate Title 18, Section 1344, by defrauding a
6 financial institution, the deposits of which were then insured
7 by the Federal Deposit Insurance Corporation?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that Count Three of the
10 Superseding Information charges you with falsifying books and
11 records of a broker-dealer, in violation of 15 United States
12 Code, Sections 78q(a) and 78ff; 17 of the Code of Federal
13 Regulations, Section 240.17a-3; and Title 18 of the United
14 States Code, Section 2?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand that Count Four of the
17 Superseding Information charges you with falsifying books and
18 records of an investment advisor, in violation of Title 15 of
19 the United States Code, Sections 80b-4 and 80b-17; 17 Code of
20 Federal Regulations, Section 275.204-2; and Title 18 of the
21 United States Code, Section 2?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that Count Five of the
24 Superseding Information charges you with making false
25 statements to facilitate a theft concerning ERISA, in violation

166dlipp

PLEA

1 of 18 United States Code, Sections 1027 and 2?

2 THE DEFENDANT: Yes.

3 THE COURT: And do you understand that Count Six of
4 the Superseding Information charges you with committing bank
5 fraud with respect to a federally insured bank, in violation of
6 Title 18 of the United States Code, Sections 1344 and 2?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand that the government
9 would have to prove each and every part or element of each of
10 these charges beyond a reasonable doubt at trial if you did not
11 plead guilty?

12 THE DEFENDANT: I do.

13 THE COURT: Mr. Moore, would you please explain for
14 the record the elements that the government would have to prove
15 if you were to go to trial on these charges?

16 MR. MOORE: Certainly, your Honor.

17 With regard to Counts One and Two, the conspiracy
18 counts, in order to prove the crime of conspiracy, the
19 government must establish each of the following elements beyond
20 a reasonable doubt:

21 First, that the conspiracy charged in the Information
22 existed, in other words, that there was in fact an agreement or
23 understanding to violate the laws of the United States;

24 Second, your Honor, that the defendant knowingly,
25 willingly and voluntarily became a member of the conspiracy

166dlipp

PLEA

1 charged;

2 And, third, that any one of the conspirators, not
3 necessarily the defendant, knowingly committed at least one
4 overt act in the Southern District of New York in furtherance
5 of the conspiracy during the life of that conspiracy.

6 With regard to Count Three, your Honor, falsifying
7 broker-dealer books and records, in order to prove this crime,
8 the government must prove beyond a reasonable doubt the
9 following elements:

10 First, that at the time of the alleged offense,
11 Bernard L. Madoff Investment Securities, otherwise known as
12 "BLMIS," was a registered broker;

13 Second, that BLMIS failed to make and keep certain
14 accurate records, as required under the SEC's rules and
15 regulations;

16 Third, that the defendant aided and abetted BLMIS'
17 failure to make and keep accurate records; and

18 Fourth, that the defendant acted knowingly and
19 willfully.

20 With regard to Count Four, your Honor, falsifying
21 books and records of an investment advisor, the government must
22 prove beyond a reasonable doubt:

23 First, that at the time of the alleged offense BLMIS
24 was an investment advisor; second, that BLMIS failed to make
25 and keep certain accurate records as required under the SEC's

166dlipp

PLEA

1 rules and regulations; third, that the defendant aided and
2 abetted BLMIS' failure to make and keep accurate records;
3 fourth, that the defendant acted knowingly and willfully; and,
4 fifth, the offense involved the use of the mails and means and
5 instrumentalities of interstate commerce.

6 With regard to Count Five, falsifying statements to
7 facilitate a theft concerning ERISA, in order to prove this
8 crime the government must demonstrate beyond a reasonable doubt
9 that, first, that at the time of the alleged offense, the
10 defendant made a false statement; second, that the defendant
11 knew the statement to be false; and, third, that the defendant
12 made a false statement in a document required by ERISA.

13 Finally, your Honor, with regard to Count Six, bank
14 fraud, in order to prove this crime beyond a reasonable doubt,
15 the government must demonstrate, first, that at the time of the
16 alleged offense the defendant executed or attempted execute a
17 scheme or artifice to defraud a bank, or that the defendant
18 execute or attempted to execute a scheme or artifice to obtain
19 money owned by or under the custody or control of that bank by
20 means of false or fraudulent pretense, representations or
21 promises; second, your Honor, the defendant engaged in a scheme
22 or artifice knowingly and willfully and with the specific
23 intent to defraud the bank; and, third, that the bank involved
24 was a federally chartered or insured financial institution.

25 THE COURT: Thank you.

166dlipp

PLEA

1 Mr. Lipkin, do you understand the matters that the
2 government would have to prove if you did not plead guilty?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: Do you understand that the maximum
5 possible penalty for the crime with which you are charged in
6 Count One is five years of imprisonment, plus a fine of the
7 greatest of \$250,000, twice the gain resulting from the offense
8 or twice the loss to other people resulting from the offense,
9 plus a \$100 special assessment, plus full restitution to all
10 persons injured as a result of your criminal conduct, plus
11 three years of supervised release after your term of
12 imprisonment?

13 THE DEFENDANT: I do.

14 THE COURT: Do you understand that the maximum
15 possible penalty for the crime with which you are charged in
16 Count Two is five years of imprisonment, plus a fine of the
17 greatest of \$250,000, twice the gain resulting from the offense
18 or twice the loss to other people resulting from the offense,
19 plus a \$100 special assessment, plus full restitution to all
20 persons injured as a result of your criminal conduct, plus
21 three years of supervised release after your term of
22 imprisonment?

23 THE DEFENDANT: I do.

24 THE COURT: Do you understand that the maximum
25 possible penalty for the crime with which you are charged in

166dlipp

PLEA

1 Count Three is 20 years of imprisonment, plus a fine of the
2 greatest of \$5 million, twice the gain resulting from the
3 offense or twice the loss to other people resulting from the
4 offense, plus a \$100 special assessment, plus full restitution
5 to all persons injured as a result of your criminal conduct,
6 plus three years of supervised release after your term of
7 imprisonment?

8 THE DEFENDANT: I do.

9 THE COURT: Do you understand that the maximum
10 possible penalty for the crime with which you are charged in
11 Count Four is five years of imprisonment, plus a fine of the
12 greatest of \$250,000, twice the gain resulting from the offense
13 or twice the loss to other people resulting from the offense,
14 plus a \$100 special assessment, plus full restitution to all
15 persons injured as a result of your criminal conduct, plus
16 three years of supervised release after your term of
17 imprisonment?

18 THE DEFENDANT: I do.

19 THE COURT: Do you understand that the maximum
20 possible penalty for the crime with which you are charged in
21 Count Five is five years of imprisonment, plus a fine of the
22 greatest of \$250,000, twice the gain resulting from the offense
23 or twice the loss to other people resulting from the offense,
24 plus a \$100 special assessment, plus full restitution to all
25 persons injured as a result of your criminal conduct, plus

166dlipp

PLEA

1 three years of supervised release after your term of
2 imprisonment?

3 THE DEFENDANT: I do.

4 THE COURT: Do you understand that the maximum
5 possible penalty for the crime with which you are charged in
6 Count Six is 30 years of imprisonment, plus a fine of the
7 greatest of \$1 million, twice the gain resulting from the
8 offense or twice the loss to other people resulting from the
9 offense, plus a \$100 special assessment, plus full restitution
10 to all persons injured as a result of your criminal conduct,
11 plus five years of supervised release after your term of
12 imprisonment?

13 THE DEFENDANT: I do.

14 THE COURT: Do you understand that the maximum
15 possible combined penalty for the six crimes with which you are
16 charged is 70 years of imprisonment plus a fine of \$7 million
17 or, if greater, the sums of the relevant gains and losses and
18 statutory amounts relating to your offenses, plus full
19 restitution to all persons injured by your criminal conduct,
20 plus a \$600 mandatory special assessment, plus supervised
21 release for five years after your term of imprisonment?

22 THE DEFENDANT: I do.

23 THE COURT: I will now give you some information to
24 verify your understanding of the supervised release aspect of
25 the potential penalty.

166dlipp

PLEA

1 "Supervised release" means that you will be subject to
2 monitoring when you are released from prison. Terms and
3 conditions will be imposed. If you violate any of the set
4 terms and conditions, you can be reimprisoned without a jury
5 trial.

6 If you were on supervised release and do not comply
7 with any of the set terms or conditions, you can be returned to
8 prison for the remainder of the term of supervised release, you
9 will be given no credit for the time that you served in prison
10 as a result of your sentence and no credit for any time spent
11 on post-release supervision. So, for example, if you received
12 a prison term and then a three-year term of supervised release
13 and after you left prison you lived up to the terms of
14 supervised release for two years but then you violated some
15 term of the supervised release, you could be returned to prison
16 for three full years.

17 Do you understand that?

18 THE DEFENDANT: I do.

19 THE COURT: Do you also understand that if I accept
20 your guilty plea and adjudge you guilty, that adjudication may
21 deprive you of valuable civil rights, such as the right to
22 vote, the right to hold public office, the right to serve on a
23 jury, and the right to possess any kind of firearm?

24 THE DEFENDANT: I do.

25 THE COURT: Do you understand that there are

166dlipp

PLEA

1 Sentencing Guidelines that the Court must consider in
2 determining your sentence?

3 THE DEFENDANT: I do.

4 THE COURT: Has your attorney discussed the Sentencing
5 Guidelines with you?

6 THE DEFENDANT: He has.

7 THE COURT: Do you understand that in determining your
8 sentence, the Court has an obligation to calculate the
9 applicable Sentencing Guidelines' range and to consider that
10 range, possible departures under the Sentencing Guidelines, and
11 other sentencing factors under Title 18 of the United States
12 Code, Section 3553(a)?

13 THE DEFENDANT: I do.

14 THE COURT: Do you understand that if your attorney or
15 anyone else has attempted to estimate or predict what your
16 sentence will be, their estimate or prediction could be wrong?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you also fully understand that even if
19 your sentence is different from what your attorney or anyone
20 else told you it might be, or if it is different from what you
21 expect, you will still be bound to your guilty plea and you
22 will not be allowed to withdraw your plea of guilty?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that the sentence to be
25 imposed will be determined solely by the Court and that I can

166dlipp

PLEA

1 only determine the sentence after the Probation Department
2 prepares a presentence report?

3 THE DEFENDANT: I do.

4 THE COURT: Do you understand that the Court has
5 discretion, while taking into account the specific provisions
6 and policy statements in the guidelines, to sentence you to any
7 number of years imprisonment between zero and the combined
8 statutory maximums of 70 years?

9 THE DEFENDANT: I do.

10 THE COURT: Are you now serving any state or federal
11 sentence, or are you being prosecuted for any other crime?

12 THE DEFENDANT: I'm not.

13 THE COURT: Do you understand that the Superseding
14 Information also includes a forfeiture allegation in which the
15 government asserts that you are required to forfeit to the
16 United States any and all property constituting and derived
17 from any proceeds that you obtained as a result of the crimes
18 charged in Counts One, Two, Three and Six, including up to
19 approximately \$143.2 billion as to Counts One and Three and
20 approximately \$700,000, including your interest in certain real
21 property, as to each of Counts Two and Six?

22 MR. FILAN: Your Honor, Mr. Lipkin understands that he
23 has to admit to the forfeiture allegation regarding the bank
24 fraud crimes in Two and Six, but he is not admitting today to
25 Count One and Three.

166dlipp

PLEA

1 THE COURT: Yes. In this section of the allocution, I
2 am confirming his understanding that there is a forfeiture
3 allegation. We will get to the admission issues later.

4 MR. FILAN: Absolutely, your Honor. I just wanted --
5 he showed some confusion there, and I wanted to make sure he
6 understood that.

7 THE COURT: Mr. Filan, would you please show
8 Mr. Lipkin the agreement, Government Exhibit 1.

9 (Pause)

10 MR. FILAN: Yes, your Honor.

11 THE COURT: Mr. Lipkin, have you signed this
12 agreement?

13 THE DEFENDANT: I have, your Honor.

14 THE COURT: Did you read it before you signed it?

15 THE DEFENDANT: Yes.

16 THE COURT: Did you fully discuss it with your
17 attorney before you signed it?

18 THE DEFENDANT: Yes, we did.

19 THE COURT: Did you fully understand it before you
20 signed it?

21 THE DEFENDANT: Yes.

22 THE COURT: Does the agreement accurately reflect your
23 complete and total understanding of the entire agreement
24 between the government, your attorney and you?

25 THE DEFENDANT: Yes.

166dlipp

PLEA

1 THE COURT: Is everything that you understand about
2 your plea, cooperation and sentence covered in this agreement?

3 THE DEFENDANT: Yes.

4 THE COURT: Has anything been left out?

5 THE DEFENDANT: I don't believe so.

6 THE COURT: Has anyone made any promises to you other
7 than what is set out in that agreement or threatened you or
8 forced you to plead guilty or to enter into this agreement?

9 THE DEFENDANT: No.

10 THE COURT: Do you understand that even if the
11 government does not oppose or take a position on what your
12 attorney will ask as a sentence, I am free to impose whatever
13 sentence I believe is appropriate under the circumstances and
14 the applicable law and you will have no right to withdraw your
15 plea?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that this agreement
18 provides that prior to the date of sentencing, you must file
19 accurate amended tax returns for the years 2006, 2007, 2008 and
20 2009, and pay or enter into an agreement to pay past taxes due
21 and owing by you to the Internal Revenue Service, including any
22 applicable penalties?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that the agreement
25 provides that you must cooperate fully with the office of the

166dlipp

PLEA

1 United States Attorney, the Federal Bureau of Investigation,
2 and any other law enforcement agency designated by the United
3 States Attorney?

4 THE DEFENDANT: I do.

5 THE COURT: Do you understand that the agreement does
6 not bind any federal, state or local prosecuting authority
7 other than the United States Attorney?

8 THE DEFENDANT: I do.

9 THE COURT: Do you understand that the agreement
10 provides that if the United States Attorney determines that you
11 have provided substantial assistance in an investigation or
12 prosecution, and if you have fully complied with the
13 understandings specified in the agreement, that the United
14 States Attorney will file a motion pursuant to Section 5K1.1 of
15 the Sentencing Guidelines requesting that the Court sentence
16 you in light of the factors set forth in subdivision (a)(1)
17 through (5) of that Section of the guidelines?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: Do you understand that the factors that
20 the Court may consider under Section 5K1.1 include the
21 significance and usefulness of your assistance, taking into
22 account the government's evaluation of your assistance; the
23 truthfulness, completeness and reliability of any information
24 or testimony you provided; the nature and extent of your
25 assistance; any injuries suffered or any danger or risk of

166dlipp

PLEA

1 injury to you on your family as a result of your assistance;
2 and the timeliness of your assistance?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: Do you understand that even if the United
5 States Attorney files such a motion, the sentence to be imposed
6 on you remains within the sole discretion of the Court?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand that you will not be
9 entitled to withdraw your plea if the Court denies the motion?

10 THE DEFENDANT: I do.

11 THE COURT: Do you understand that if United States
12 Attorney determines that you have not provide substantial
13 assistance in an investigation or prosecution or that you have
14 violated any provision of the agreement, the United States
15 Attorney is not obligated to file a motion under Section 5K1.1?

16 THE DEFENDANT: I do.

17 THE COURT: Do you understand that you will not be
18 entitled to withdraw your guilty plea even if the United States
19 Attorney has not filed a motion?

20 THE DEFENDANT: I do.

21 THE COURT: Do you understand that your agreement
22 provides that if you commit any further crimes or if it is
23 determined that you gave false, incomplete or misleading
24 testimony or information, or that you otherwise violated any
25 provision of the agreement, you will be subject to prosecution

166dlipp

PLEA

1 for any federal violations of which the United States Attorney
2 has knowledge, including perjury and obstruction of justice?

3 THE DEFENDANT: I do.

4 THE COURT: Do you understand that your agreement
5 provides that if you commit any further crimes, or if it is
6 determined that you gave false, incomplete or misleading
7 testimony or information, or that you otherwise violated any
8 provision of this cooperation agreement, all statements made by
9 you to the United States Attorney or other designated law
10 enforcement agents and any testimony given by you before a
11 grand jury or other tribunal may be admissible in evidence in
12 any criminal proceedings against you?

13 THE DEFENDANT: I do.

14 THE COURT: Do you understand that your agreement also
15 provides that you may not assert a claim that such statements
16 should be suppressed from evidence and that you are waiving
17 your right to claim that such statements should be suppressed?

18 THE DEFENDANT: I do.

19 THE COURT: Do you understand that on page 3, this
20 agreement also includes your agreement to forfeit to the United
21 States any and all property constituting and derived from any
22 proceeds that you obtained as a result of the crimes charged in
23 Counts One, Two, Three and Six in an amount to be determined by
24 the Court as to Counts One and Three, and as to Counts Two and
25 Six, that you are agreeing to the entry of a money judgment

166dlipp

PLEA

1 against you in the total amount of \$1.4 million in United
2 States currency, and that you will forfeit all of your interest
3 in certain real property in Ridgewood, New Jersey and in
4 certain accounts held in the names of or for the benefit of
5 you, your wife and minor children at Fidelity Investments?

6 THE DEFENDANT: Yes.

7 THE COURT: Mr. Filan, is that a correct statement?

8 MR. FILAN: Absolutely, your Honor. Thank you.

9 THE COURT: Mr. Lipkin, do you still wish to plead
10 guilty pursuant to this agreement?

11 THE DEFENDANT: I do.

12 THE COURT: Mr. Filan, do you know of any valid reason
13 why Mr. Lipkin would prevail at trial?

14 MR. FILAN: I do not, your Honor.

15 THE COURT: Do you know any reason why he should not
16 be permitted to plead guilty?

17 MR. FILAN: I do not.

18 THE COURT: Mr. Lipkin, would you please stand at this
19 time and tell me what you did that makes you guilty of each of
20 the crimes charged in the third Superseding Information.

21 THE DEFENDANT: Your Honor, I would like to first
22 apologize to my family, my friends, and all the victims in this
23 case. I'm very sorry for my conduct.

24 I now want to address my actions as they relate to the
25 charges against me.

166dlipp

PLEA

1 With regard to the conspiracy charged in Count One and
2 also charged in Counts Three, Four and Five, I worked with
3 Bernard L. Madoff Investment Securities' employees to deceive
4 others. I created fake DTC reports in New York City.

5 I created these documents knowingly and willingly. I
6 knew that these documents were fake because they were created
7 by me and not by the DTC. I created them to match documents
8 given to me by other BLMIS employees. My understanding was
9 that the fake DTC reports that were prepared were being given
10 to the auditors to mislead them.

11 Also as part of the conspiracy charged in Count One
12 and the charges in Count Three, Four and Five, it was my job to
13 prepare the BLMIS payroll documents and records. As part of my
14 job from at least 1996 in New York City, I created fake, false
15 payroll records and also submitted to the Department of Labor
16 inaccurate form 5500s. These forms falsely showed that a
17 number of people were employees of BLMIS when in fact I knew
18 they were not working for BLMIS.

19 For instance, sometime in 2008, Daniel Bonventre
20 instructed me to include one of his sons as an employee when I
21 knew he wasn't working there, and I agreed to do it; and I
22 created BLMIS payroll records to reflect that he worked there.

23 Further, beginning in 2007, in New York City, I
24 knowingly certified on the Form 5500 that there were people who
25 worked at BLMIS when in fact they did not. I also understood

166dlipp

PLEA

1 that the Form 5500 contained a certification that all
2 information on the form was accurate, and I signed it knowing
3 it was not accurate and then I submitted it to the Department
4 of Labor using Federal Express.

5 Counts Two and Six.

6 Regarding Count Two, conspiracy to commit bank fraud,
7 and Count Six, bank fraud, I was attempting to get a
8 construction loan. In order to ensure I received the loan, I
9 went to Frank DiPiscali to create a new BLMIS account in my
10 name that falsely said my account value was greater than it
11 was. I knew I could ask Frank DiPiscali to do this for me
12 because I knew it had been done previously for other BLMIS
13 employees.

14 That account statement was created in New York at
15 BLMIS in November of 2008. Once I got the fake statement, I
16 sent it from New York City to a bank in Florida. I knew that
17 the account did not have the money in it that the statement
18 said it did and that it was wrong to mislead the lender to get
19 the loan.

20 THE COURT: Would you remain standing. I have a few
21 more questions for you.

22 You indicated that the fake DTC reports that you were
23 making were going to be given to the auditors in order to
24 deceive auditors. What did you understand the auditors were
25 going to do with that information?

166dlipp

PLEA

1 THE DEFENDANT: It was to confirm positions at several
2 investment advisory accounts that we were reporting at.

3 THE COURT: And to what persons or entities were the
4 reports going to be made?

5 THE DEFENDANT: The SEC.

6 THE COURT: And you use the term "DTC," what does that
7 mean?

8 THE DEFENDANT: Depository Trust Company.

9 THE COURT: You used the term "5500" reports. What
10 are those?

11 THE DEFENDANT: Those are reports that certify monies
12 that are in a 401(k) plan.

13 THE COURT: And is the 401(k) plan a type of plan
14 that's governed by the Employee Retirement Income Security Act?

15 THE DEFENDANT: It is.

16 THE COURT: And to what agency, if any, of the
17 government are the 5500s submitted?

18 THE DEFENDANT: The federal government, the IRS -- the
19 Department of Labor. I'm sorry.

20 THE COURT: I notice that you were looking at some
21 notes as you were speaking. Do those notes accurately reflect
22 truthful information and actions that you yourself took?

23 THE DEFENDANT: Yes, they do.

24 THE COURT: When you did these things that you have
25 described, did know that what you were doing was wrong and

166dlipp

PLEA

1 illegal?

2 THE DEFENDANT: Yes.

3 THE COURT: Mr. Moore, does the government wish any
4 further factual matters to be addressed in the plea allocution?

5 MR. MOORE: No. Thank you, your Honor.

6 THE COURT: Mr. Moore, would you please summarize the
7 government's evidence against Mr. Lipkin.

8 And, Mr. Lipkin, you can be seated, please.

9 MR. MOORE: Certainly, your Honor.

10 Had this case proceeded to trial, the government would
11 have proven, through testimony and evidence, beyond a
12 reasonable doubt the facts set forth in the Superseding
13 Information. Specifically, the government would have proven
14 with respect to Counts One, Three, Four and Five of the
15 Information a conspiracy to falsify books and records of a
16 broker-dealer and investment advisor and conspiracy to falsify
17 statements to facilitate a theft concerning ERISA, along with
18 the corresponding substantive charges: That Mr. Lipkin was
19 employed by BLMIS from in or about the mid-1980s through at
20 least on or about December 11, 2008, when BLMIS collapsed. In
21 or about 1996, Mr. Lipkin began working with his
22 co-conspirators in falsifying the books and records at BLMIS.

23 For instance, Mr. Lipkin, working with other
24 co-conspirators, created fraudulent account statements
25 detailing the account values of several investment advisory, or

166dlipp

PLEA

1 "IA", accounts at BLMIS. In furtherance of this fraud, your
2 Honor, Mr. Lipkin prepared letters and statements setting out
3 fake holdings purportedly held in multiple BLMIS IA accounts.

4 Further, in connection with reviews by the SEC and a
5 European accounting firm, Mr. Lipkin and other co-conspirators
6 created false and fraudulent BLMIS books and records as well as
7 false documents purportedly obtained from third parties in the
8 ordinary course of business at BLMIS. For example, Mr. Lipkin
9 and others created fake reports purportedly obtained by the
10 Depository Trust Company, or "DTC." These fake DTC reports
11 purported to show the securities holdings of BLMIS IA clients,
12 which in fact did not exist. Mr. Lipkin knew the purpose of
13 these fake DTC reports was to mislead the auditors.

14 During his tenure at BLMIS, and at the direction of
15 other co-conspirators, Mr. Lipkin also created false BLMIS
16 books and records reflecting individuals who did not actually
17 work at BLMIS. Mr. Lipkin was responsible for processing the
18 payroll and administering the 401(k) plans at BLMIS, and in
19 this capacity, your Honor, Mr. Lipkin was responsible for
20 preparing and maintaining internal BLMIS payroll records. He
21 was aware that there were individuals on BLMIS's payroll who
22 did not work for the firm but who nevertheless received
23 salaries and benefits. Mr. Lipkin created false internal BLMIS
24 payroll records reflecting that these individuals worked at
25 BLMIS. Furthermore, he included a number of fake employees in

166dlipp

PLEA

1 the total number of employees that he reported to the
2 Department of Labor.

3 With respect to Counts Two and Six, conspiracy to
4 commit bank fraud and bank fraud, your Honor, the government
5 would prove that in or about 2008, Mr. Lipkin prepared and
6 submitted a loan application to a lending institution insured
7 by the Federal Deposit Insurance Corporation, or "FDIC," which
8 purported to represent accurately his personal and financial
9 information. However, he fraudulently improved his
10 creditworthiness by falsifying his personal and financial
11 information in a manner that was material to the lending
12 institution in making its lending decision. Specifically,
13 Mr. Lipkin, working with others, prepared and submitted false
14 and misleading information concerning his assets.

15 THE COURT: Mr. Moore, before you sit down, or I will
16 ask you to stand back up, would you just map for me a little
17 more precisely the nature of the violation of the
18 ERISA-specific charge, which we've referred to as facilitating
19 false statements to facilitate a theft concerning ERISA, the
20 elements had been recited, and the allocution here deals with
21 the falsification of plan financial reports by including people
22 who were not employees.

23 Is there also a specific theft element? Is there a
24 necessity to show intent that plan assets were actually to be
25 given to someone who wasn't entitled to them? I just don't

166dlipp

PLEA

1 understand the nexus between the theft concept and the false
2 statements to my satisfaction.

3 MR. MOORE: Sure. Your Honor, I don't believe that is
4 an essential element of the crime, but we have alleged that and
5 I believe defendant has admitted to that nevertheless.

6 It is our understanding -- and we would prove this
7 beyond a reasonable doubt should this case go to trial -- that
8 Mr. Lipkin submitted the Form 5500, which is a reporting form
9 that goes to the Department of Labor, which essentially lists
10 the number of employees at the employer's institution. In this
11 case, Mr. Lipkin inflated that number, therefore misreporting
12 the number of employees who were working at BLMIS, when he in
13 fact knew that there were fewer employees working at that
14 institution. As a result of doing so, he also put them on the
15 internal payroll records at BLMIS, thus giving those employees
16 who in fact never worked at BLMIS 401(k) plans and other
17 salaries and benefits.

18 Can you hold on one second, your Honor?

19 (Pause)

20 Right. Entitling them to benefits provided under the
21 Social Security Administration as well as under a 401(k) plan,
22 your Honor. As a result of that, your Honor, the Form 5500
23 that goes to the Department of Labor does concern ERISA, and,
24 therefore, we believe Mr. Lipkin has met all the three elements
25 for Count Five, falsifying statements to facilitate a theft

166dlipp

PLEA

1 concerning ERISA.

2 THE COURT: Mr. Lipkin, is Mr. Moore's summary of the
3 nature and significance in terms of entitlement to benefits
4 under an ERISA government plan accurate with respect to your
5 own activities in falsifying the 401(k) plan records?

6 THE DEFENDANT: It is, your Honor.

7 THE COURT: Mr. Lipkin, would you please stand again.
8 Mr. Lipkin, how do you now plead to the charge against
9 you in Count One of the third Superseding Information, not
10 guilty or guilty?

11 THE DEFENDANT: Guilty.

12 THE COURT: How do you now plead to the charge against
13 you in Count Two of the third Superseding Information, not
14 guilty or guilty?

15 THE DEFENDANT: Guilty.

16 THE COURT: How do you now plead to the charge against
17 you in Count Three of the third Superseding Information, not
18 guilty or guilty?

19 THE DEFENDANT: Guilty.

20 THE COURT: How do you now plead to the charge against
21 you in Count Four of the third Superseding Information, not
22 guilty or guilty?

23 THE DEFENDANT: Guilty.

24 THE COURT: How do you now plead to the charge against
25 you in Count Five of the third Superseding Information, not

166dlipp

PLEA

1 guilty or guilty?

2 THE DEFENDANT: Guilty.

3 THE COURT: And how do you now plead to the charge
4 against you in Count Six of the third Superseding Information,
5 not guilty or guilty?

6 THE DEFENDANT: Guilty.

7 THE COURT: Are you pleading guilty to each of these
8 charges because you are in fact guilty of the conduct charged
9 in each count?

10 THE DEFENDANT: I am.

11 THE COURT: Are you pleading guilty voluntarily and of
12 your own free will?

13 THE DEFENDANT: I am.

14 THE COURT: Mr. Filan, would you please show
15 Mr. Lipkin Court Exhibit 1, the advice of rights form.

16 Mr. Lipkin, have you signed this form?

17 THE DEFENDANT: I have.

18 THE COURT: Did you read it before you signed it?

19 THE DEFENDANT: I did.

20 THE COURT: Did you discuss it with your attorney
21 before you signed it?

22 THE DEFENDANT: We did.

23 THE COURT: Did you understand it before you signed
24 it?

25 THE DEFENDANT: I did.

166dlipp

PLEA

1 THE COURT: Mr. Filan, did you also review and sign
2 Court Exhibit 1?

3 THE DEFENDANT: I did, your Honor.

4 THE COURT: Mr. Filan, are there any other questions
5 that you believe I should ask Mr. Lipkin in connection with
6 this plea?

7 MR. FILAN: No, your Honor.

8 THE COURT: Mr. Moore, are there any other questions
9 that you believe I should ask Mr. Lipkin in connection with
10 this plea?

11 MR. MOORE: No. Thank you, your Honor.

12 THE COURT: And are there any victims who wish to
13 speak in connection with this matter?

14 (Pause)

15 I note that no one has raised their hand.

16 Mr. Lipkin, you have acknowledged that you are guilty
17 as charged in the Information. I find that you know your
18 rights and that you are waiving them voluntarily.

19 Because your plea is entered knowingly and voluntarily
20 and is supported by an independent basis in fact containing
21 each of the essential elements of each of the offenses, I
22 accept your guilty plea, and I adjudge you guilty of the
23 offenses charged in Counts One, Two, Three, Four, Five and Six
24 of the third Superseding Information in this case, which is
25 numbered 10 Criminal 228.

166dlipp

PLEA

1 You can be seated now. Thank you.

2 THE DEFENDANT: Thank you.

3 THE COURT: Mr. Filan, do you wish to be present for
4 any interview of Mr. Lipkin in connection with the preparation
5 of the presentence report?

6 MR. FILAN: I do, your Honor.

7 THE COURT: I will make that direction.

8 MR. FILAN: Thank you.

9 THE COURT: Mr. Moore, what is the parties' request
10 with respect to the setting of a sentencing date or a control
11 date?

12 MR. MOORE: Your Honor, at this time, we request that
13 we have six months for a sentencing control date.

14 THE COURT: And that a presentence report not be
15 ordered at this point?

16 MR. MOORE: That is correct, your Honor.

17 THE COURT: Ms. Ng, may we have a control date six
18 months out?

19 THE CLERK: Thursday, December 15, 2011, at 11 a.m.

20 THE COURT: The sentencing control date is set for
21 December 15, 2011, at 11 in the morning.

22 In advance of that date, Mr. Moore, will the
23 government inform the Court as to whether it is appropriate to
24 commence the preparation of the presentence report or to
25 further extend the control date?

166dlipp

PLEA

1 MR. MOORE: We will, your Honor.

2 THE COURT: Thank you.

3 When it is time for sentencing, counsel, I just wish
4 to ask and to remind you to be prompt in getting any objections
5 or additional information to Probation after the draft report
6 is disclosed, and any 5K1.1 letter or letter indicating an
7 intention to make a motion pursuant to 5K1.1 must be prepared
8 and submitted to the Court and the Probation Department before
9 the probation report is completed so that I can have the
10 benefit of the Probation Department's thinking in that regard
11 as well.

12 Sentencing submissions are governed by my sentencing
13 submission procedures, which are available on the court's
14 website and also here in hard copy in the courtroom.

15 Mr. Lipkin, the Probation Office will be preparing a
16 presentence report at some point to assist me in sentencing
17 you. You will be interviewed by the Probation Office. It is
18 important that the information that you give to the probation
19 officer be truthful and accurate. The report is important in
20 my decision as to what your sentence will be. You and your
21 attorney have a right and will have an opportunity to examine
22 the report, to challenge or comment on it, and to speak on your
23 behalf before sentencing.

24 Failing to be truthful with the Probation Office and
25 the Court may have an adverse effect on your sentence and may

166dlipp

PLEA

1 subject you to prosecution.

2 Do you understand that?

3 THE DEFENDANT: I do.

4 THE COURT: Thank you.

5 Now, give me just one moment here.

6 (Pause)

7 Section 3143 of Title 18 provides that the Court is to
8 order a person who has been found guilty of an offense and who
9 is awaiting sentencing as a general matter to be detained
10 unless the judicial officer finds by clear and convincing
11 evidence that the person is not likely to flee or pose a danger
12 to the safety of any other person or the community if released.

13 Do the parties have a proposal with respect to
14 detention or release, and would the government set forth its
15 position as to the 3143 factors?

16 MR. MOORE: Yes, your Honor. In light of Mr. Lipkin's
17 cooperation and his full disclosure of his financial assets,
18 his dealings at BLMIS, we are confident that he will be
19 following the rules as set in our proposed bail package that we
20 would like to present to the Court; namely, that his bail be
21 secured by a \$2.5 million personal recognizance bond, secured
22 by \$800,000 in cash or property.

23 THE COURT: And that would be property other than the
24 residential property that has been mentioned in connection with
25 the --

166dlipp

PLEA

1 MR. MOORE: Absolutely, your Honor.

2 We also request that he be subject to strict pretrial
3 supervision; that his travel be restricted to the Southern and
4 Eastern Districts of New York, the District of New Jersey,
5 where he resides, and the District of Connecticut, where his
6 attorney practice.

7 Your Honor, we also request that he surrender all of
8 his travel documents and make new no travel applications.

9 Your Honor, we would request that these conditions be
10 met no later than this Friday.

11 THE COURT: And have you had sufficient dealings up to
12 now with Mr. Lipkin to have a view as to his reliability in
13 keeping appointments, his ability to be trusted at his word in
14 such relevant matters?

15 MR. MOORE: We have, your Honor, as well as the
16 agency, the FBI, has been working with him.

17 In addition, your Honor, to ensure our confidence in
18 Mr. Lipkin, we have already interviewed a number of cosigners
19 that have volunteered to serve as suriters for his bond.
20 Specifically, we've interviewed seven cosigners that he has
21 proposed, and at this time we are prepared to approve all of
22 them.

23 THE COURT: And is there anything that you wish to say
24 to me with respect to community or family ties and the
25 significance of those matters in terms of risk of flight?

166dlipp

PLEA

1 MR. MOORE: Yes, your Honor, which was a factor in our
2 determination. Mr. Lipkin is a long-time resident of the New
3 York/New Jersey area. He resides in New Jersey with his wife
4 and children along with several other family members, your
5 Honor. And as a result we are satisfied that he is not a risk
6 of flight, that he does not pose a danger to the community, so
7 long as the conditions that we had proposed are also assigned
8 with his release.

9 THE COURT: Are you confident of your assessment in
10 terms of the potential availability of assets to facilitate
11 flight?

12 MR. MOORE: Your Honor, as a part of this process, and
13 one of the reasons why we have expressed some confidence in
14 Mr. Lipkin, is that he has fully disclosed his assets to us.
15 He has filled out financial affidavits with our office fully
16 disclosing the whereabouts of all of his funds. And I believe,
17 as Mr. Filan will attest, he has also agreed to allow us to
18 immediately start forfeiting those proceeds.

19 THE COURT: And you and your colleagues or
20 investigators have traced monies that to your knowledge went
21 from BLMIS to Mr. Lipkin and have mapped his disclosures
22 against known assets?

23 MR. MOORE: That's correct, your Honor, which also
24 proves some confidence in Mr. Lipkin, that our own independent
25 evaluation matched up with what proved to be Mr. Lipkin's

166dlipp

PLEA

1 truthful disclosure about his own financial assets and the
2 whereabouts of those assets.

3 THE COURT: Given the termination of operations of
4 BLMIS, does the government have a view as to potential danger
5 to the community? Is that an issue here?

6 MR. MOORE: We do not believe it is an issue in this
7 case, your Honor. No.

8 THE COURT: And I understand that Mr. Lipkin is
9 recently unemployed. What is the government's position as to
10 the significance of that status with respect to risk of flight?

11 MR. MOORE: Your Honor, Mr. Lipkin, from our
12 understanding, will be assisting his wife with the children.
13 His wife is a full-time employee and is fully employed. And we
14 believe, in light of those conditions, your Honor, he is not a
15 risk of flight, particularly if, as we have requested, the
16 conditions are assigned for strict pretrial supervision and the
17 security that he is willing to post, including the \$800,000 of
18 cash which is coming from close family members of the
19 defendant. As well, your Honor, a number of the cosigners we
20 do believe have a significant moral suasion over the defendant
21 in light of their close relationship to him.

22 THE COURT: Thank you.

23 Officer Ramesar, I've reviewed your report, for which
24 I thank you.

25 MS. RAMESAR: You are welcome.

166dlipp

PLEA

1 THE COURT: Is there anything in particular or in
2 addition to or different from what Mr. Moore has argued that
3 you wish to bring to my attention at this point?

4 MS. RAMESAR: No, your Honor.

5 THE COURT: Thank you.

6 Mr. Filan, did you wish to be heard?

7 MR. FILAN: Just to say, your Honor, that we have
8 Mr. Lipkin's passport, which we will surrender today to
9 Pretrial Services, as the government requests. And we also
10 have two cosigners here with us today, who will execute the
11 appearance bond today before they leave the courthouse to begin
12 that process.

13 And we urge the Court to release Mr. Lipkin for the
14 reasons that Mr. Moore covered. I have really nothing further
15 to add to that.

16 THE COURT: Thank you.

17 MR. FILAN: Thank you, your Honor.

18 THE COURT: Mr. Moore, the summary of the proposed
19 conditions that you've provided deals with the surrender of
20 Mr. Lipkin's travel documents. Is there a reason why there is
21 no provision for the surrender of the travel documents of
22 immediate family members?

23 MR. MOORE: Your Honor, we have no objection to the
24 wife keeping her passport. In fact, it is our understanding
25 that she will be taking herself and her children to a

166dlipp

PLEA

1 destination this summer.

2 However, if the Court feels that she should surrender
3 her travel passports, we would have no objection to that
4 condition being added.

5 THE COURT: It seems to me prudent to do that, given
6 the magnitude of the exposure.

7 So I will direct that the travel documents of the wife
8 and children also be surrendered without prejudice to specific
9 application, on notice, for return in connection with specific
10 travel approved by the Pretrial Services Department to which
11 there is no other objection. If there is an objection, I will
12 hear it.

13 MR. MOORE: Thank you, your Honor.

14 THE COURT: Mr. Filan.

15 MR. FILAN: That is fine, your Honor. Thank you.

16 THE COURT: Thank you.

17 Having carefully considered all that I have heard here
18 today, including the admissions of criminal activity, the
19 result of the investigation of Pretrial Services, the
20 government's extensive account of its activities and evaluation
21 with respect to risk of flight and potential for danger to the
22 community presented by Mr. Lipkin, I find that there is clear
23 and convincing evidence that with the imposition of the
24 proposed conditions Mr. Lipkin is not likely to flee or pose a
25 danger to the safety of any other person or the community.

166dlipp

PLEA

1 Accordingly, I will grant him release on the
2 conditions that have been proposed, with the modification that
3 we just discussed concerning the surrender of family travel
4 documents.

5 I am now going to prepare a bail disposition sheet
6 enumerating these conditions, and then I will distribute that
7 in draft to the parties so that we can be sure that I've gotten
8 everything correct. So bear with me as I type this up, please.

9 (Pause)

10 What I've written is this: "\$2.5 million PRB secured
11 by \$800,000 cash and property, and 7 FRPs. Travel restricted
12 to DNJ, D Conn, E.D.N.Y. and S.D.N.Y. All travel documents of
13 Defendant, wife and children to be surrendered, with no new
14 applications (without prejudice to application for return of
15 documents of wife and children for particular preauthorized
16 travel). Strict pretrial supervision. All conditions must be
17 met by 4:00 p.m. on June 10, 2011."

18 Does that cover everything accurately?

19 MR. MOORE: That is our understanding. Thank you,
20 your Honor.

21 MR. FILAN: Yes, your Honor. Thank you.

22 THE COURT: I will fix one typo and then I will sign.
23 How many copies are needed?

24 THE CLERK: Six.

25 THE COURT: OK.

166dlipp

PLEA

1 (Pause)

2 THE COURT: Now, Mr. Moore and Ms. Baroni, can you
3 shepherd things through the Magistrate Clerk's office here, or
4 whatever section of the Clerk's Office --

5 MR. MOORE: We will, your Honor. Thank you.

6 THE COURT: And, also, Mr. Filan and Mr. Lipkin will
7 need to go over to the Probation Department as well to get
8 paper work set up and get any specifics as to what needs to be
9 done there today that will be carried out.

10 MR. FILAN: Thank you, your Honor.

11 THE COURT: Thank you. Is there anything further that
12 we need to take up together this afternoon?

13 MR. MOORE: Can you give us one moment, your Honor?

14 THE COURT: Yes.

15 MR. MOORE: Nothing further on the government's part.
16 Thank you, your Honor.

17 MR. FILAN: Nothing from the defendant, your Honor.

18 THE COURT: All right. Thank you. We are adjourned.

19 THE DEFENDANT: Thank you, your Honor.

20 THE CLERK: All rise.

21

22

23

24

25

I (We) hereby certify that the foregoing
is a true and accurate transcript, to the best
of my (our) skill and ability, from my (our)
stenographic notes of this proceeding.

Vincent J. Balogman

Official Court Reporter
U.S. District Court